



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
CROWN CENTRAL PETROLEUM) DOCKET NO. CWA-8-2000-06
CORP.,)
)
)
RESPONDENT)

ORDER DENYING MOTION TO COMPEL WITNESS ATTENDANCE BY SUBPOENA

This proceeding arises under the authority of Section 311(b)(6)(B)(ii) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act, as amended, 33 U.S.C. § 1321(b)(6)(B)(ii). The proceeding is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (the "Rules of Practice"), 40 C.F.R. §§ 22.1-22.32, and the Supplemental Rules Governing Public Notice and Comment in Proceedings under Sections 309(g) and 311(b)(6)(B)(ii) of the Clean Water Act and Section 1423(c) of the Safe Drinking Water Act, 40 C.F.R. § 22.45.

The hearing in this matter is scheduled to begin on **May 15, 2001**, in Denver, Colorado, and will continue if necessary on May 16, and 17, 2001. A joint set of stipulated facts, exhibits, and testimony is due on or before **May 3, 2001**.^{1/}

^{1/} Complainant's Motion To Supplement Complainant's Prehearing Exchange filed on April 25, 2001, is pending before the undersigned.

On April 18, 2001, Complainant filed a Motion To Compel Witness Attendance.^{2/} Pursuant to this motion, Complainant requests

the issuance of subpoenas to five named individuals who are "non-EPA employed witnesses named in Complainant's Prehearing Exchange" to compel their attendance at the May 15, 2001, hearing. The motion is made pursuant Section 309(g)(10) of the Clean Water Act, 33 U.S.C. § 1319(g)(10). To date, Respondent has not responded to the motion.

Section 22.21(b) of the Rules of Practice, 40 C.F.R. § 22.21(b), allows for issuance of subpoenas by the Administrative Law Judge to require the attendance of witnesses or the production of documentary evidence at hearing. This procedural rule specifies criteria for granting a request for a subpoena. Section 22.21(b) provides, in pertinent part:

The Presiding Officer may require the attendance of witnesses or the production of documentary evidence by subpoena, if authorized under the Act, upon a showing of the grounds and necessity therefor, and the materiality and relevancy of the evidence to be adduced.

First, it is pointed out that this matter arises under the authority of Section 311(b)(6)(B)(ii) of the Clean Water Act and that Complainant cites Section 309(g)(10) of the Clean Water Act as the authority for the issuance of the requested subpoenas. The appropriate citation of authority for Complainant's motion is found at Section 311(b)(6)(I) of the Clean Water Act. Moreover, Complainant has made no showing of the grounds and necessity for the requested subpoenas. See 40 C.F.R. §22.21(b). Although the materiality and relevancy of the evidence to be adduced could possibly be gleaned from Complainant's prehearing exchange, there is no demonstration of such in the motion.

^{2/} Complainant's Motion To Compel Witness Attendance was filed after the undersigned's office telephonically contacted Complainant to advise Complainant that its submission of subpoenas for signature must be accompanied by motion therefor with service on Respondent.

As set forth above, Section 22.21(b) of the Rules of Practice requires, as a condition precedent to granting a request for issuance of a subpoena, a showing of the ground and necessity therefor together with the materiality and relevancy of the evidence to be adduced. See *ARCO Chemical Company*, Docket No.

EPCRA-III-240, CERCLA-III-027, 1999 EPA ALJ LEXIS 14, *3 (ALJ March 8, 1999). As discussed above, Complainant's motion fails to comply with the requirements of this procedural rule for issuance of a subpoena. Accordingly, Complainant's Motion To Compel Witness Attendance is **Denied**.

Barbara A. Gunning
Administrative Law Judge

Dated: April 26, 2001
Washington, DC

CERTIFICATE OF SERVICE

I hereby certify that the original and one copy of this
ORDER

DENYING MOTION TO COMPEL WITNESS ATTENDANCE BY SUBPOENA, dated April 26, 2001, **IN RE: CROWN CENTRAL PETROLEUM CORP.**, **DOCKET NO. CWA-8-2000-06**, were mailed to the Regional Hearing Clerk, Reg. VIII, and a copy was mailed via first class mail to Respondent and Complainant (see list of addresses).

Maria Whiting-Beale
Legal Staff Assistant

Dated: April 26, 2001

ADDRESSEES:

CERTIFIED MAIL RETURN RECEIPT REQUESTED:

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